

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1589. CONTAINERS AND LABELS.

Reference: Sections 6007, 6008, 6009, 6012, 6364, and 6364.5, Revenue and Taxation Code.

(a) DEFINITIONS. The term “containers” as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, and materials from which such containers are manufactured.

The term “returnable containers” as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of the commodities contained therein. A container, title to which is retained by the seller or for which a deposit is taken by such seller, is a returnable container.

A container used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:

1. The container is sold together with the contents;
2. No deposit is charged on the container;
3. Title to the container is not retained;
4. There is no obligation to repurchase the container;
5. The container is of the type that is fungible; and
6. The container is repurchased without regard to whether it is the same container originally sold.

Example: A tomato paste processor purchased a new or used container. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. This container is not customarily returned by the buyer.

Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.

All other containers are “nonreturnable containers.” Examples of nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.

The term “deposit” as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when the container or a similar container is delivered to the seller. The term “deposit” as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with Section 14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.

(b) APPLICATION OF TAX.

- (1) Containers. Tax does not apply to the sale of, and the storage, use, or other consumption of:

(A) Nonreturnable containers when sold or leased without the contents to persons who place the contents in the container and sell the contents together with the container.

(B) Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.

(C) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. In the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the container for refilling for sale with the contents is not taxable.

Regulation 1589 (Continued)

(D) All containers when sold or leased with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.

(E) Operative April 1, 2000, all containers when sold or leased without the contents to persons who place food products for human consumption in the containers for shipment, provided the food products will be sold. The exemption applies without regard to whether the food products are sold in the same container or not, or whether the food products are remanufactured or repackaged prior to their sale.

Tax applies to all other sales of containers except sales for the purpose of resale to other sellers of containers who purchase them for resale without the contents.

Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to, blood collection units and blood pack units.

Deposits as defined herein are not taxable.

(2) LABELS. Tax does not apply to sales of labels or nameplates if:

(A) The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of nameplates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.

(B) The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.

(c) PARTICULAR APPLICATIONS.

(1) Price Tags. Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold.

(2) Feed Analysis Tags. Tax does not apply to sales of feed analysis tags to be attached to containers of feeds and sold along with the container and contents.

(3) Feed Bags. Feed bags sold to feed dealers who place feed in the bags and sell the feed together with the bags are nonreturnable containers,¹ and the sale of such bags to feed dealers is not taxable. It is immaterial whether the bags are made of burlap, cotton, paper, or other material, or whether there is a brand name or dealer's name imprinted on the bags.

If, however, any feed dealer charges a deposit to customers to secure the return of the bags, or otherwise requires his customers to return the bags to him, the bags become returnable containers and tax applies to the sale of the bags to the feed dealer.

(4) Gift Wrapping. Tax applies to the entire charge for "gift wrapping", (i.e., furnishing the materials and labor required to wrap an item for a customer so as to be suitable for use by him as a gift), whether or not the person who does the gift wrapping is the seller of the contents. If the person who does the gift wrapping is the seller of the contents, the gift wrapping is considered sold together with the contents, whether or not a separate charge is made for the gift wrapping. The person who does the gift wrapping may purchase the materials free of tax for resale.

However, tax does not apply to charges for gift wrapping exempt food products sold by the person who does the gift wrapping, unless the value of the gift wrapping exceeds the value of the food products.

History: Effective August 1, 1933.

Adopted January 1, 1945, as a restatement of previous rulings.

Amended and renumbered August 5, 1969, effective September 6, 1969.

¹ The conclusion that feed bags are nonreturnable containers resulted from a statewide survey made by the board with the cooperation of the California Grain and Feed Association, which showed that substantially less than 50 percent of the feed bags are returned to the feed dealers by their customers for re-use.

Regulation 1589 (Continued)

Amended May 21, 1975, effective June 29, 1975.

Amended October 7, 1987, effective December 30, 1987. In subdivision (a), expanded the definition of the term "deposit" to exclude redemption or recycling values of beverage containers in order to prevent any confusion which may arise when the California Beverage Container Recycling and Litter Reduction Act becomes effective. Because redemption or recycling values of beverage containers are not considered deposits, they therefore are includable in the gross receipts of the seller of the containers.

Amended April 23, 1996, effective August 8, 1996. New subdivision (b)(1)(B) added; existing subdivisions (b)(1)(B) & (C) re-designated (b)(1)(C) & (D), respectively. Obsolete effective date deleted from subdivision (c)(4).

Amended June 11, 1998, effective July 11, 1998. Amended subdivision (b) to incorporate provisions of Chapter 773, Statutes of 1997.

Amended July 29, 1999, effective October 15, 1999. Subdivision (a) phrase "of the contents" deleted from second sentence in the first unnumbered paragraph; also new unnumbered second and third paragraphs added. Subdivision (b)(1)(C) new second and third sentence added. Subdivision (b)(1)(D) the words "or leased" added to the first paragraph after the word "sale".

Amended October 19, 2004, effective January 13, 2005. Subdivision (b)(1)- word "the" added before word "sales" and phrase ", and the storage, use, or other consumption of:" added to end of subdivision to clarify that the exemptions listed therein apply to both sales and use tax. Subdivision (b)(1)(E) added.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.